

**IN THE MAGISTRATES' COURT OF FIJI**  
**AT SUVA**

Criminal Case No: - 835/2025

**STATE**

**V**

**DAVID KUTTY**

**For the Prosecution: Cpl Qiolevu**

**The accused: In person**

**Date of Sentence: 29<sup>th</sup> of May 2025**

**SENTENCE**

1. DAVID KUTTY, you have pleaded guilty to one count of Assault Occasioning Actual Bodily Harm, contrary to section 275 of the Crimes Act.<sup>1</sup>
2. The admitted facts reveal that on 24/05/2025 after argument with your defacto partner , you assaulted her causing multiple injuries as per the medical report. You grabbed her t-shirt and pushed her to the ground and punched her face. She felt unconscious and when revived felt pain in face, chest, shoulder and back.
3. I am satisfied that your guilty plea was made voluntarily and unequivocally. Accordingly, I convict you of this charge.
4. Under section 275 of the Crimes Act, the offence of Assault Occasioning Actual Bodily Harm carries a maximum penalty of five years' imprisonment.
5. In *Matai v State*<sup>2</sup> His Lordship Justice Madigan noted that the sentencing tariff for domestic violence-related assaults causing actual bodily harm ranges from six to eighteen months' imprisonment.
6. Given the domestic nature of the offence, I have considered section 4(3) of the Sentencing and Penalties Act<sup>3</sup>, which requires sentencing courts to take such factors into account when determining an appropriate sentence.
7. In *Laisiasa Koroivuki v The State*<sup>4</sup>, the Court of Appeal of Fiji articulated the principles to be applied in determining the starting point of a custodial sentence as follows:

**"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and**

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<sup>1</sup> No 44 of 2009.

<sup>2</sup> [2018] FJHC 25; Criminal Appeal 108.2017Ltk (26 January 2018).

<sup>3</sup> No 42 of 2009.

<sup>4</sup> [2013] FJCA 15; AAU0018.2010 (5 March 2013).

**aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range".**

8. Having considered the objective seriousness of the offence, I select a starting point of six (6) months' imprisonment.
9. As aggravating factors, I note that the victim got multiple injuries from your assault and even got unconscious. For these factors, I add an additional six (6) months, raising the sentence to twelve (12) months' imprisonment.
10. In mitigation, I take into account that you are 51 years old, taxi driver and got 2 children. Your last conviction was in 2014. For these mitigating factors, I reduce the sentence by three (3) months, resulting in a term of nine (9) months' imprisonment.
11. You pleaded guilty on the first date when you were produced to court and for that I deduct 1/3 from your sentence to reach 06 months imprisonment.
12. I must now consider the applicability of a suspended sentence pursuant to the Sentencing and Penalties Act.<sup>5</sup>
13. The victim appeared in court with visible injuries, even nearly a week after the incident, and stated that she does not want to stay with you. This court also noted the difficulties she experienced while standing in court. Your assault appears to have traumatized her, prompting her to file a DVRO application in this court.
14. Although technically you are a first-time offender, you are not a young offender. Accordingly, I do not find any compelling reasons before me to consider a non-custodial sentence.
15. DAVID KUTTY, you are sentenced to 06 months imprisonment for this charge.
16. In view of the victim's safety, a Domestic Violence Restraining Order is hereby issued. This order includes standard non-molestation and non-contact conditions.<sup>6</sup>
17. 28 days to appeal.



<sup>5</sup> s26(2) (b) , Sentencing and Penalties Act 2009.

<sup>6</sup> S27;s29, Domestic Violence Act 2009.